APPENDIX F

Commentary

THE HOOPER THEORY OF A HOMICIDE

On a State required autopsy, Dr. Anne Hooper, found white beads spread throughout Tegan's intestines. At first, Dr. Hooper believed that Tegan had taken aspirin. However, the toxicology tests found no aspirin. What was found was caffeine with an unusual distribution in that it was ten times higher in the blood than in the tissue. The only product found in the Davis home that contained caffeine in pill or capsule form was Dexitrime, a diet pill. So, Dr. Hooper next believed that the mysterious white beads were 'plastic' pill remains of diet pills. After the toxicology report did not find the other ingredient to diet pills, Phenylpropanolanune (PPA), Dr. Hooper next concluded that the white beads must be some form of the remains of 'time released' caffeine, pills. Dr. Hooper made an extensive search for 'timed released' caffeine, but could find no such product, probably because no one has been found who manufactures it. There is no marketable need for a tasteless pill to make one slightly more awake twelve hours later.

As explained in Appendix E, the small amount and distribution of the caffeine make a poisoning impossible. In order to overcome this obstacle of scientific impossibility, Dr. Hooper assumed that the toxicology report was wrong in the tissue tests:

Tr. R. 576): Q.: "The three tissue tests for caffeine. Did that indicate a lethal amount?

A. If the results are correct, no, it was not a lethal amount. I am questioning the correctness of the results."

Dr. Hooper fixed the perceived laboratory error by increasing the caffeine ten times to equal the blood. In a note to Sgt. Spradlin from Dr. Hooper (Discovery 002481), Dr. Hooper writes:

"b. I assumed that the caffeine was ***evenly distributed throughout the body***, and calculated on the basis of the blood caffeine level, 6.6 mg% or 6.6/100gm. (Emphasis added)

To make a poisoning possible, Dr. Hooper had to increase the caffeine levels in the tissue ten times in order to reverse the flow of the caffeine. In her mind, Dr. Hooper changed the findings of the official toxicology report from a harmless two cups of coffee to an imaginary lethal level of fifty to one hundred cups of coffee. She could accomplish this by not reporting the lesser amounts found in the tissue and letting people assume it was evenly distributed throughout Tegan's body.

Then Dr. Hooper ran into another major problem. The total quantity of caffeine pills required to be lethal was too great to be held in a vomiting three year old child's stomach.

> Tr. R. 574. Hooper: "I tried to do some calculations to see if – how many pills, say, it was all half-life destruction, it would take, and I think I came up – she would have to have 100 pills. No way did she eat 100 of those capsules. There's just no way you can go back and say because it was a level of such and such, at such and such time, that she had to have taken so many capsules. There is just no way you can do it, and you shouldn't even try. If you do try, you may get into a ridiculous situation."

If the toxicology report is accurate, it is a scientific impossibility for a caffeine poisoning to have occurred. On the other hand, even if the toxicology report is not accurate, as a practical matter, a caffeine poisoning is not possible either. The child's body would not hold this much caffeine. Caffeine when it reaches certain levels also causes one to vomit. Some additional method would be required to get the caffeine to stay in the system. No such drug has been found. Even today the State refuses to explain the nature and cause of the accusation. The fact no one can explain how this poisoning is possible seems to bother no one but the petitioner

Dr. Hooper, post trial also disclosed other aspects of her theory and that is that valium might have played a part in the death of Tegan. She disclosed on her post trial deposition: (P. 8, Dep. Feb. 13, 2001

"When I talked to Spradlin, he was about it. He was very upset because he had a firm belief that either the Valium killed Tegan or the caffeine killed Tegan or the caffeine killed Tegan, and he couldn't see that they both contributed to it. And therefore, he felt if the story of the Valium came out, maybe Marybeth would get away with it completely because it wasn't the caffeine."

P. 17 Dep. Feb 13, 2001. "This is as she told me, so its hearsay. That he threatened her with all kinds of – I guess arrests, or something like that if she dared talk to anybody about it. That she was to keep mum on the subject. I don't remember what the specific threats were but they weren't very nice."

The valium was important for another reason, it explained why the caffeine would have been injected. The fact that Dr. Hooper thought that valium administered by

the treating physician might have contributed to the death would have lowered the offense from first degree murder to manslaughter.

Post trial, Dr. Hooper added to her list of why the toxicology report was wrong. The amount of caffeine in bile was higher than in the tissue. The problem with this argument is that toxicologists do not use the bile to measure the amount of the drug. Bile concentrates the bile and would show the presence of caffeine at an earlier time, but would not be able to tell in what quantity it was. Dr. Hupka, the toxicologist would not use the bile to disregard the official findings.